

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR

: JUDGMENT :

D.B. CIVIL SPECIAL APPEAL(W)NO.347/2007

Rajeev Kumar
Vs.
Mrs. Richa Thakur

DATE OF JUDGMENT :: 09-08-2007

PRESENT

HON'BLE THE ACTING CHIEF JUSTICE SHRI J.M. PANCHAL
HON'BLE SHRI JUSTICE MOHAMMAD RAFIQ

Mr. M.P. Singh for the appellant.

By the Court:(Per Hon'ble the Acting Chief Justice)(Oral):

The instant appeal is directed against order dated February 19, 2007 rendered by the learned Single Judge in S.B. Civil Writ Petition No.345/2007 by which the prayers made by the appellant to allow him to meet his minor son, Master Rohan on every fortnight either at High Court premises or at any other place as may be deemed fit and proper by the Court and to allow him to take his minor son for outings on weekends/holidays, have been rejected.

The appellant has filed petition under the provisions of the Hindu Marriage Act, 1955 for restitution of conjugal rights against the respondent. During the pendency of the said petition, the petitioner has filed an application being HMA petition No.A-1843/2005 on October 18, 2005 and prayed to grant interim custody of his minor son. It is also claimed in the said application that during the pendency and final disposal of the application for interim custody,

the Court should direct the respondent to give him access to minor son, Master Rohan on the weekends and all the three major vacations be equally shared between him and the respondent. On application being filed by the respondent before the Supreme Court, the case has been transferred to the Family Court, Jaipur and is pending before the said Court. The case of the appellant is that for a pretty long time, the learned Presiding Officer of the family court was not available. He, therefore, invoked extraordinary jurisdiction of this Court under Article 226 of the Constitution by filing S.B. Civil Writ Petition no.345/2007 and claimed the reliefs which are mentioned earlier.

The learned Single Judge has dismissed the petition on the ground that the appellant has already resorted to the alternative remedy before the family court for claiming the reliefs which were claimed in the petition and, therefore, interference of the Court was not called for under writ jurisdiction.

This Court has heard the learned counsel for the appellant.

The fact that application seeking interim reliefs is pending before the Family Court, Jaipur is not disputed by the learned counsel for the appellant. On the facts and in the circumstances of the case, this Court is of the opinion that interest of justice would be served if the family court is directed to consider the said application within the time to be stipulated by the Court in this order.

For the foregoing reasons, the family court, therefore, is directed to consider the application submitted by the appellant on October 18, 2005 as early as possible, and preferably within two months from the date of production of certified copy of this order by the appellant before it.

Subject to the above-referred to direction, the appeal stands disposed of.

[MOHAMMAD RAFIQ], J.

[J.M.PANCHAL], ACTG.CJ.

Skant/-